

DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

December 7, 2001

REPLY TO
Regulatory Branch

SUBJECT: Transmittal of **PROVISIONAL** Department of the Army
Permit No. 2000-02170(1)

Mr. Robert W. Barnes
Barnes Nursery, Incorporated
3511 Cleveland Road West
Huron, Ohio 44839

Dear Mr. Barnes:

This pertains to your request for authorization to maintain your existing irrigation channel and earthen berm with proposed modifications, along the southern shoreline of East Sandusky Bay, adjacent to, and south of, Sheldon Marsh State Nature Preserve, in Huron Township, near the City of Huron, in Erie County, Ohio.

Enclosed is a "**Provisional** Department of the Army Permit." **The provisional permit is NOT VALID and does not authorize you to do your work.** The provisional permit describes the work that will be authorized, and the General and Special Conditions which will be placed on your final Department of the Army (DA) permit if the State of Ohio requirements are satisfied as described below. **No work is to be performed in the waterway or any wetlands until you have received a validated copy of the DA permit.**

By Federal law no Department of the Army permit can be issued until a Section 401 Water Quality Certification (WQC), or waiver thereof, has been issued by the Ohio Environmental Protection Agency, and a Coastal Zone Management (CZM) Federal consistency determination has been issued by the Ohio Department of Natural Resources.

As of December 7, 2001, neither Water Quality Certification, nor waiver thereof, have been issued for your project. If the State fails or refuses to act by May 11, 2002 on the Water Quality Certification, the Water Quality Certification requirement will be waived.

As of June 11, 2001, the Coastal Zone Management Federal consistency was denied. On July 10, 2001, you filed with the United States Department of Commerce (USDOC) a notice of appeal.

On September 10, 2001, the State of Ohio, Department of Natural Resources (ODNR), and you jointly filed a request with the USDOC for an extension of time for submission of initial briefs and supporting materials. The USDOC granted an extension of time for filing briefs until December 21, 2001 for ODNR, and November 21, 2001 for you. As of November 20, 2001, ODNR and you have agreed to enter into discussions which may have an impact on this appeal and jointly filed a request with the USDOC for an extension of time for submission of initial briefs and supporting materials. The USDOC has granted an extension of time for filing briefs until March 27, 2002 for ODNR, and February 27, 2002 for you.

Conditions contained in the Water Quality Certification and Coastal Zone Management consistency determination will be incorporated into the final DA permit. Should the State's action preclude validation of the provisional permit in its current form, a modification to the provisional permit will be evaluated and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuing a new public notice.

When you have obtained a Water Quality Certification (WQC) and Coastal Zone Management consistency concurrence determination (CZM), please return this copy of the Provisional DA permit, a copy of the WQC and CZM and, if appropriate, a list of any inconsistencies you note between the WQC and CZM and the provisional DA permit and any objections you have to the terms and conditions of the permit. In the event that the State fails or refuses to act by May 11, 2002 on the WQC, please return this copy of the provisional DA permit and an outline of any objections to the terms and conditions of the permit.

If the State denies the required Water Quality Certification and/or you fail to reach a settlement in your negotiations with regard to Coastal Zone Management consistency, then your DA

permit may be denied without prejudice. Should you subsequently obtain the Water Quality Certification and Coastal Zone Management consistency, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your State requirements, please contact:

Ms. Laura Fay

Section 401 Reviewer
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-2148

and

Ms. Kim Baker
Ohio Department of Natural Resources
Fountain Square, Building C-2
1952 Belcher Drive
Columbus, Ohio 43224-1386
(614) 265-6411

Questions pertaining to this matter should be directed to Michael G. Montone, who may be contacted by calling (716) 879-4435, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, or by e-mail at: michael.g.montone@usace.army.mil

Sincerely,

//S//

Glen R. DeWillie
Lieutenant Colonel, U.S. Army
District Engineer